



**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R8–ES–2017–N021; FF08ECAR00000–FXES1140800000–178]**

**Orange County Transportation Authority (OCTA) M2 Natural Community  
Conservation Plan/Habitat Conservation Plan, Orange County, California; Final  
Environmental Impact Report/Environmental Impact Statement and Habitat  
Conservation Plan**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have prepared a final environmental impact report (EIR)/environmental impact statement (EIS) under the National Environmental Policy Act of 1967, as amended, and its implementing regulations. The EIR portion of the joint document was prepared by the Orange County Transportation Authority (OCTA) in compliance with the California Environmental

Quality Act (CEQA). This notice also announces receipt of a final natural community conservation plan/habitat conservation plan (HCP) from the applicant, OTCA.

**DATES:** *Submitting Comments:* To ensure consideration, we must receive written comments by 5 p.m. on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** *Submitting Comments:* Please send written comments to Mr. Mendel Stewart, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008. You may also submit comments by facsimile to (760) 431–5901.

Information and comments related specifically to the final EIR and the California Environmental Quality Act should be submitted to Mr. Dan Phu, Orange County Transportation Authority (Attn: M2 NCCP/HCP), 550 South Main Street, P.O. Box 14184, Orange, CA 92863–1584.

*Reviewing Documents:* Documents available for public review include the final EIR/EIS, final NCCP/HCP, the final Implementing Agreement, and our response to public comments we received on the draft EIR/EIS and NCCP/HCP.

For copies of the documents, please contact the Service by telephone at (760) 431–9440, or by letter to the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Copies of the final EIR/EIS, M2 NCCP/HCP, and Implementing Agreement also are available for public review, by appointment, during

regular business hours, at the Carlsbad Fish and Wildlife Office or at the OCTA Office (550 S. Main Street, Orange, CA 92868). Copies are also available for viewing in select Orange County public libraries (listed below) and at the OCTA's Web site, at <http://www.octa.net/>.

1. Tustin Library, 345 E. Main St. Tustin, CA 92780.
2. Mission Viejo Library, 100 Civic Center, Mission Viejo, CA 92691.
3. Garden Grove Regional Library, 11200 Stanford Ave., Garden Grove, CA 92840.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen A. Goebel, Assistant Field Supervisor, at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**) or at (760) 431-9440 (telephone). If you use a telecommunications device for the deaf, please call the Federal Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** This notice advises the public that we have prepared a final environmental impact report (EIR)/environmental impact statement (EIS) under the National Environmental Policy Act of 1967, as amended, and its implementing regulations. The EIR portion of the joint document was prepared by the Orange County Transportation Authority (OCTA) in compliance with the California Environmental Quality Act (CEQA). This notice also announces receipt of a final natural community conservation plan/habitat conservation plan (HCP).

## **Background**

Section 9 of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), and Federal regulations prohibit the “take” of fish and wildlife species federally listed as endangered or threatened. Take of federally listed fish or wildlife is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or attempt to engage in such conduct (16 U.S.C. 1538). “Harm” includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c)). Under limited circumstances, we may issue permits to authorize incidental take, which is defined under the Act as take that is incidental to, and not the purpose of, otherwise lawful activities. “Take” under the ESA does not apply to plant species and is not prohibited under the ESA; however, the plant species identified in the NCCP/HCP will be listed on the Federal permit as covered species in recognition of the conservation measures provided for them under the Plan and the applicant would receive “No Surprises” regulatory assurances for all covered species under the Federal permit.

### ***Covered Species***

The applicant seeks incidental take authorization for 10 animal species and assurances for 3 plant species. Collectively, the 13 listed and unlisted species are referred to as “covered species” by the NCCP/HCP and include 3 plant species (all unlisted), 1 unlisted fish species, 3 reptile species (all unlisted), 4 bird species (2 endangered, 1 threatened, and 1 unlisted), and 2 mammal species (both unlisted). The permit would

provide take authorization for all animal species and assurances for those species and all plant species identified by the NCCP/HCP as “covered species.” Take authorized for listed covered animal species would be effective upon permit issuance. For currently unlisted covered animal species, take authorization would become effective concurrent with listing, should the species be listed under the Act during the permit term.

The proposed permit would include the following three federally listed animal species: Least Bell’s vireo (*Vireo bellii pusillus*; endangered), southwestern willow flycatcher (*Empidonax traillii extimus*; endangered), and coastal California gnatcatcher (*Polioptila californica californica*; threatened). See the EIR/EIS and NCCP/HCP for information on unlisted species proposed for coverage under the permit.

### ***Covered Activities***

The NCCP/HCP is intended to protect and sustain viable populations of native plant and animal species and their habitats in perpetuity through avoidance, minimization, and mitigation measures. These measures include purchasing lands for permanent conservation, as well as performing restoration on lands currently protected that will enhance habitat to address mitigation requirements associated with the proposed NCCP/HCP. The proposed NCCP/HCP and permit would accommodate the implementation of the OCTA’s 13 proposed freeway projects designed to reduce congestion, increase capacity, and improve traffic flow of Orange County’s important transportation infrastructure. It would also accommodate management activities

conducted on the OCTA acquired lands (or Preserves) within Orange County.

The OCTA's NCCP/HCP Plan Area includes approximately 511,476 ac (206,987 ha), encompassing all of Orange County, California. The NCCP/HCP is intended to function independently of other HCPs within the Orange County region (e.g., Central and Coastal Orange County NCCP/HCP, Orange County Southern HCP, and Western Riverside County's Multiple Species Habitat Conservation Plan).

As described in the NCCP/HCP and the EIR/EIS, the proposed NCCP/HCP would provide protection measures for species on the OCTA covered freeway projects as well as for covered activities within the OCTA Preserves, in part by including purchase of lands for permanent conservation. Covered activities, including covered freeway projects and covered activities within Preserves, are estimated to directly affect up to 154 ac (62 ha) of habitat and indirectly affect up to 484.4 ac (196 ha) of habitat for covered species that will require mitigation over the 40-year term of the permit. OCTA has purchased seven open-space properties, totaling 1,296 ac (524 ha), of which about 1,232 ac (499 ha) is undeveloped open space and will be available to mitigate for project impacts to covered species. All Preserves will have endowments set up to cover long-term management needs. OCTA has also approved funding for 11 habitat restoration projects in the Plan Area, totaling over 350 ac (142 ha). Future restoration efforts are identified within the NCCP/HCP to further benefit covered species.

The primary source of funding for the NCCP/HCP will derive from the M2 transportation sales tax designed to raise money to improve Orange County's transportation system. As part of the M2 sales tax initiative, a minimum of 5 percent of the revenues from the freeway program will be set aside for the M2 Environmental Mitigation Program (EMP) revenues. These funds will be used for "programmatic mitigation." The development and implementation of the M2 NCCP/HCP will use a portion of this funding source to achieve higher value environmental benefits such as habitat protection, connectivity, and resource preservation/enhancement in exchange for streamlined project approvals for the M2 freeway projects. The expenditures for key components of the NCCP/HCP conservation strategy that achieve upfront and comprehensive mitigation (e.g., Preserve acquisitions and funding of restoration projects) will be paid for through M2 EMP revenues. Any costs associated with implementing avoidance and minimization measures, as described in Section 5.6, "Avoidance and Minimization," will be funded through the individual construction budgets and will not rely on funding under the M2 EMP.

The NCCP/HCP includes measures to avoid and minimize incidental take of the covered species, emphasizing project design modifications to protect covered species and their habitats. A monitoring and reporting plan would gauge the Plan's success based on achievement of biological goals and objectives and would ensure that conservation keeps pace with development. The NCCP/HCP also includes a management program, including adaptive management, which allows for changes in the conservation program if

the biological species objectives are not met, or new information becomes available to improve the efficacy of the NCCP/HCP's conservation strategy.

Covered projects and activities would include 13 discrete proposed freeway segments in which freeway projects have been identified for coverage under the NCCP/HCP. These proposed projects are designed to reduce congestion, increase capacity, and smooth traffic flows of Orange County's important transportation infrastructure. In addition, activities related to ongoing habitat management, restoration, and monitoring activities by Preserve Managers and activities necessary to provide limited public access have been identified for coverage. These covered activities fall under two major categories, including:

1. Covered freeway projects; and
2. Covered activities within Preserves, including preserve management, trail creation, restoration, and monitoring activities.

### **National Environmental Policy Act Compliance**

The EIR/EIS analyzes two alternatives in addition to the proposed action (i.e., permit issuance based on the NCCP/HCP) described above. The other alternatives include a no-action (i.e., no permit) alternative and a reduced plan alternative covering only species that are federally or State-listed as threatened or endangered. Two other alternatives were considered during the planning process but were not evaluated because they did not meet the purpose and need of both the OCTA and the Service; these



alternatives involved a no-take alternative and an alternative requiring the OCTA to participate in project-by-project mitigation.

The final EIR/EIS includes all comments we received on the draft EIR/EIS and our response to those comments. After the 30-day waiting period, we will complete a record of decision that announces our decision on the action that will be implemented and discusses all factors leading to the decision.

### **Public Review**

Copies of the final EIR/EIS, NCCP/HCP, and IA are available for review (see **Availability of Documents**). Any comments we receive will become part of the administrative record and may be available to the public. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority**

We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347 *et seq.*; NEPA), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1500–1508, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531–1544 *et seq.*; Act).

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**Michael Fris,  
Assistant Regional Director,  
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Sacramento, California.**

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